

APPEAL NO. 042154
FILED OCTOBER 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was commenced on May 4, 2004, with a second session held on August 9, 2004. The hearing officer determined that the appellant/cross-respondent (claimant herein) has an impairment rating (IR) of 11% based upon the amended report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant files a request for review in which he argues that the determination of IR is against the great weight of the evidence. The respondent/cross-appellant (self-insured herein) files a response to the claimant's request for review urging affirmance of the determination of IR. The self-insured, however, files a request for review in which it contends that the hearing officer erred making a finding regarding the extent of injury when the issue of the extent of the claimant's injury was not before him. There is no response in the file from the claimant to the carrier's request for review.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer did not err in determining that the claimant had an 11% IR, as certified by the Commission-appointed designated doctor. The claimant asserts that the designated doctor's certification is contrary to the great weight of the other medical evidence. Specifically, he argues that the designated doctor's rating is flawed because the doctor does not rate his depression and erectile dysfunction (ED) and because the designated doctor does not properly apply Commission Advisory 2003-10, signed July 22, 2003, and 2003-10B, signed February 25, 2004. The designated doctor stated that he did not assess permanent impairment for depression or ED because he did not believe these conditions were permanent. The designated doctor also obviously considered Commission Advisory 2003-10, and 2003-10B, in determining the claimant's IR, but decided that rather than placing the claimant in Diagnosis-Related Estimate Category IV it was more appropriate in this case to use the range of motion model in assessing the claimant's IR. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. We view the report of the claimant's treating doctor as representing a difference in medical opinion, which does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. The hearing officer's IR determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In the present case, the self-insured complains about the hearing officer's finding that the claimant's injury includes depression and ED. As far as the self-insured's appeal is concerned, we have in a number of cases considered a hearing officer's findings concerning extent of injury to be surplusage when the issue of the extent of an injury is not before the hearing officer. See Texas Workers' Compensation Commission Appeal No. 041899, decided September 27, 2004. However, in a long and unbroken chain of cases we have also held that when the issue before the hearing officer is the IR that the extent of the injury is a threshold issue. See Texas Workers' Compensation Commission Appeal No. 992030, decided October 29, 1999. In fact we stated as follows in Texas Workers' Compensation Commission Appeal No. 961324, decided August 16, 1996:

The Appeals Panel has noted in the past that the resolution of a dispute over an IR cannot proceed unless the "threshold" issue of the extent of injury is resolved either by the parties or the hearing officer, even if not expressly raised by the parties. See Texas Workers' Compensation Commission Appeal No. 951097, decided August 17, 1995. See also Texas Workers' Compensation Commission Appeal No. 941748, decided February 13, 1995.

The decision and order of the hearing officer are affirmed.

The true corporate name of insurance carrier is **(a self-insured governmental fund)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE)

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge